IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1742 of 2007
With
FIRST APPEAL No. 1743 of 2007
To
FIRST APPEAL No. 1744 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER & 1 - Appellant(s)
Versus
AMBARAM KOYABHAI PATEL & 1 - Defendant(s)

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Appearance :
MR SATYAM CHHAYA, AGP for Appellant(s) : 1 - 2.
MR TRILOK J PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 16/04/2007

ORAL JUDGMENT

1. The present appeals arise against the judgement and award passed by the Reference Court dated

15.2.2005 in Land Acquisition Reference Nos.158 of 1998 to 160 of 1998, whereby the market value of the land under acquisition was assessed as Rs.1,800/- per are and the additional compensation was awarded together with 30% solatium and 12% increase in the market value from the date of the Notification under Section 4 till the award and the interest at the rate of 9% for the first year and 15% for the subsequent year(s).

2. The short facts of the case appear to be that for the land situated at Village Naugama proposal was moved for acquisition of the land for construction of bridge over the river Amravati. The Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as “the Act”) was published on 30.4.1993 and thereafter under Section 6 of the Act the Notification was published on 8.10.1993. The award was passed on 30.4.1994 and the Land Acquisition Officer (LAO) ordered for compensation at the rate of Rs.800/- per are for non-irrigated land. The land owners/claimants

were not satisfied with the compensation awarded by the LAO. Hence, the disputes were raised which came to be referred to the Reference Court for adjudication. The Reference Court while deciding the matter was mainly guided two considerations; one was for the market value of the land fixed and confirmed by this Court in the proceedings of First Appeal at the rate of Rs.790/- for the land situated at Village Gadkhol in which case Notification under Section 4 of the Act was published in the year 1979; and the another aspect considered by the Reference Court was that the sale instance of the land of the very village in the year 1988 shows the average price at about Rs.1,250/- to Rs.1,300/- per are and, therefore, keeping the aspects of appreciation at the rate of 10% per annum from the year 1979 based on the Notification of the year 1979 and the fixation of the valuation at Rs.790/- and the appreciation based on the sale instance, the Reference Court found the market value as that of Rs.1,800/- per are (Rs.18/- per sq. mtrs.) and hence, awarded compensation

accordingly and also additionally ordered for the statutory benefits of the increase in the price at 12% per annum and the solatium at the rate of 30% and the interest at the rate of 9% for the first year and 15% for the subsequent year and it is under these circumstances, the present appeals before this Court.

3. Heard Mr.Chhaya, learned AGP for the State and Mr.Trilok J. Patel, learned Counsel for the respondents-original claimants.

4. It appears that there is no dispute on the point that for the land situated at Village Gadkhol, Division Bench (Coram: J.M.Panchal & M.H.Kadri, J.J.) of this Court in its judgement dated 1.3.1999 in FA No.927 of 1990 and others confirmed the valuation of Rs.790/- per are as the market value for the land under acquisition therein in respect of which the notification under Section 4 of the Act was published in January, 1979. As per the deposition of the claimants, which has also been referred to by the Reference Court, the distance between the Village Gadkhol and Naugama is about 2 kms and

the boundary of Village Gadkhol touches the boundary of Village Naugama, of which land is under acquisition in the present case. Therefore, the land situated at Village Naugama can be said in the near proximity to the land situated at Village Gadkhol, in respect of which the market value came to be assessed by this Court of Rs.790/- for the period January, 1979. If 10% increase is considered per year, it would be up to 14 years' period and, therefore, rise in the price would be approximately 140% and the exact figure would come to Rs.1,896/-. As against the same, the Reference Court has awarded compensation at Rs.1,800/- per are.

5. It may be recorded that the Division Bench of this Court in the above referred judgement while confirming the market value of the land at Rs.790/- for Village Gadkhol did take into consideration the various aspects and observed, inter alia, at para 13, 14, 15, and 16 as under:-

> 13. The learned counsel for the appellants and the respondents have taken us through the oral and documentary evidence adduced before the Reference Court. From the oral testimony of the witnesses examined by the respondents, it becomes evident that the old and new national highways towards Mumbai and Ahmedabad pass

through the lands of village Piraman and village Gadkhol. The railway facility is also available to the residents of both the villages. As per the oral testimony of the witnesses of the respondents, Ankleshwar-Rajpipla road also passes through the lands of village Gadkhol, and Ankleshwar-Andada road as well as the road towards Valia-Dediapada from Ankleshwar also passes through the lands of village Piraman. Therefore, from the oral testimony of the witnesses examined by the respondents, it becomes evident that villages Gadkhol and Piraman are connected by roads with Ankleshwar and other surrounding villages. The evidence of these witnesses also shows that prior to publication of notification under Section 4(1) of the Act, industrial activities surrounding both the villages had gathered momentum and many private industries were established near the acquired lands. O.N.G.C. residential colony was situated near the lands of village Gadkhol since the year 1962. Near the acquired lands of village Piraman, many factories were established, i.e, Bright Bar, Ranchhodrai Pulse Mill, Carboard factory, Sugar factory, and Dinesh Mill, prior to issuance of notification under Section 4(1) of the Act. On the northern side of village Piraman, construction activities had started and Mission School and Church were established. It is also evident from the oral testimony of the witnesses that village Piraman was situated at a distance of one kilometer from Ankleshwar Highway. It is also borne out from the oral testimony of the witness of the respondents that, due to development on the northern side, octroi limits of Ankleshwar Town were extended and octroi-naka was placed on the lands of village Piraman. It is established by the oral testimony of the witnesses that the acquired lands of villages Piraman and Gadkhol were similarly situated having same fertility and the acquired lands of both the villages were having building potentiality prior to issuance of notification under Section 4(1) of the Act.

14. Before the Reference Court, the respondents had produced various sale deeds which were admitted in evidence by the Reference Court but neither vendor nor vendee nor scribe of the document was examined to prove the contents of sale deeds, and, therefore, the Reference Court should not have considered them while determining market value of lands acquired. (See: Special Deputy Collector vs. Kurra Sambasiva Rao reported in AIR 1997 Supreme Court 2625).

15. It is well settled legal principle that previous judgments and awards of the Reference Court, if they relate to similarly situated adjacent lands and have become final provide good guidance in determining the market value of the lands acquired subsequently. There is no doubt that, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred. For a

judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgment of court and as an instance, it must have been provided by the person relying upon such judgment by adducing evidence alliunde that due regard being given to all attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land. The basis of the valuation as found by a competent court with regard to the neighbouring land which has become final has to be taken into consideration for determining the just compensation for lands acquired subsequently. The award passed by the Land Acquisition Officer may serve as a basis to determine the compensation, but the order passed by the civil court on reference under section 18 of the Act which has become final definitely binds both parties with regard to the price that was prevailing in that area.

16. It is pertinent to note that lands of same villages, i.e., villages Piraman and Gadkhol, came to be acquired for extention of Ankleshwar Industrial Estate, by notification issued under Section 4(1) of the Act on October 20, 1977, and this very Bench had determined the market price of the acquired lands of villages Piraman and Gadkhol as on October 20, 1977, at Rs.685/-per Are, vide judgment and order dated December 23,1998, rendered in First Appeals Nos. 170 of 1990 to 193 of 1990, with cross First Appeals Nos. 2527 of 1992 to 2551 of 1992. Notification under section 4(1) of the Act pursuant to which the lands of villages Piraman and Gadkhol which are subject matter of these appeals and cross objections were acquired, was published on January 22, 1979. Therefore, there is a gap of nearly one year and three months between two notifications issued under Section 4(1) of thee Act. As noted earlier, there was heavy pressure on the lands of villages Piraman and Gadkhol due to industrial activities which had taken place in the surrounding villages. Vast lands of different villages surrounding towns of Bharuch and Ankleshwar were acquired by the Gujarat Industrial Development Corporation for establishment of industrial estate in this area. Therefore, the Court can presume that, day by day, there was increase of price of lands of villages surrounding both the towns. As there was gap of one year and three months between two notifications, by which the lands of both villages came to be acquired for the same purpose, we hold that price rise of 15% should be given to the determination of market price of lands of both the villages, which was determined, keeping in mind notification under Section 4(1) of the Act as on October 20, 1977. The acquired lands, which are subject matter of the present appeals, were acquired by notification under Section 4(1) of the Act published on January 22, 1979. As held earlier, there was heavy pressure on the lands of both villages because of the industrialisation. In our view, 15% market rise can be given as there was gap of one year and three months between the two notifications. Applying 15% price-rise on Rs.685/- per

> Are, the figure of Rs.102.75 will have to be added (which is rounded of at Rs.105) i.e. Rs.685 plus Rs.105 = Rs.790/- per Are. We, therefore, determine the market value of the acquired lands of village Gadkhol and Piraman at Rs.790/- per Are as on January 22, 1979, when the notification under Section 4(1) of the Act was published.

6. Therefore, it appears that in view of the above referred valuation assessed by the Division Bench of this Court for the land under acquisition of Village Gadkhol at Rs.790/- as of January, 1979 and as in the present case the land under acquisition in respect of which the notification under Section 4 of the Act was published on 30.4.1993, keeping in view the rise at the rate of 10% per year from 1979 to 1993 the market value assessed by the Reference Court at Rs.1,800/- cannot be said as unreasonable and appears to be just and proper.

7. Even on the aspect of sale instances, it appears that the Reference Court at para 18 based on the contention raised on behalf of the State found that if the sale instances are considered of March, 1988, the average price comes to Rs.1,250/- to Rs.1,300/- per are and as the notification under Section 4 of the Act in the

present case is of 1993, the rise of 50%, if considered, it would be exceeding Rs.1,800/- per are. As against the same, the Reference Court has awarded Rs.1,800/- per are. It deserves to be recorded that the sale instances were pertaining to the land of the very village Naugama. Therefore, even based on the evidence produced on behalf of the State, the market value appears to be rightly assessed by the Reference Court of Rs.1,800/- per are.

8. In view of the aforesaid it appears that the market value assessed of the land under acquisition by the Reference Court of Rs.1,800/- per are appears to be just and proper.

9. The other additional benefits awarded by the Reference Court of increase at the rate of 12% per annum from the Notification under Section 4 of the Act until the award and solatium at the rate of 30% and the interest at the rate of 9% for the first year and 15% for subsequent year are in accordance with the statutory scheme of the Land Acquisition Act.

10. In view of the above, the appeals are meritless.

Hence, the same are dismissed.

11. Mr.Patel, learned Counsel for the respondents, states that the amount as awarded by the Reference Court is up till now not disbursed. Considering the facts and circumstances, the State shall deposit the amount as awarded by the Reference Court within a period of three months from the date of receipt of the order of this.

16.4.2007 **(Jayant Patel, J.)**

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